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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,736	09/10/2003	Gary M. Richter	023720-0338	3906
7590	11/01/2004		EXAMINER	
Scott M. Day Foley & Lardner Suite 3800 777 East Wisconsin Avenue Milwaukee, WI 53202-5306			SZUMNY, JONATHON A	
			ART UNIT	PAPER NUMBER
			3632	
DATE MAILED: 11/01/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/659,736	RICHTER ET AL.
Examiner	Art Unit	
Jon A Szumny	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 September 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 35-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 35-77 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 September 2004 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

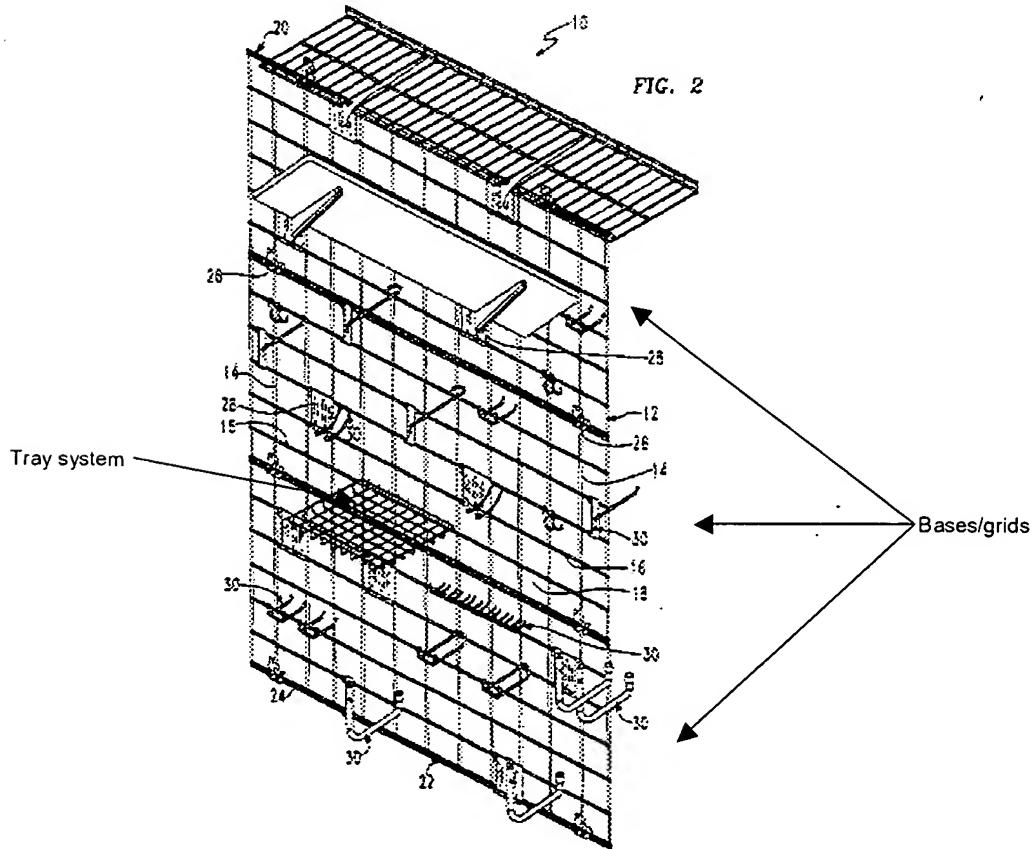
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

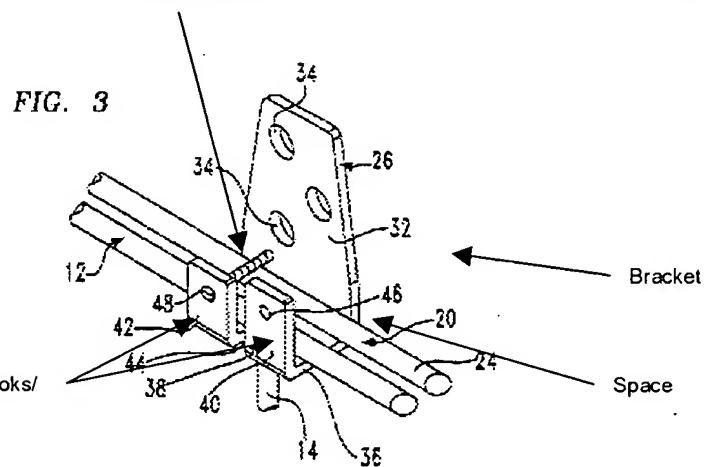
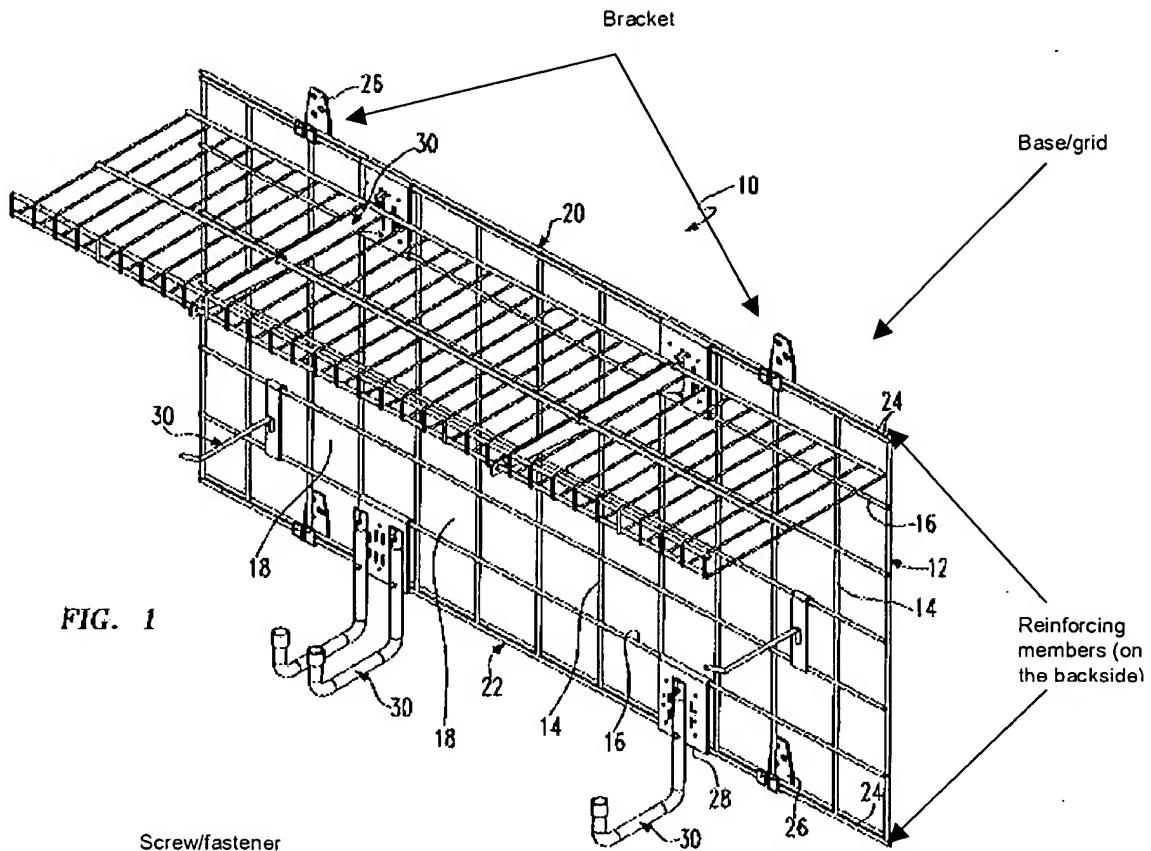
This is the second office action for application number 10/659,736, Merchandising System, filed on September 10, 2003.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 35-38, 40-43, 46, 47, 52, 54-56, 58, 59, 62, 64, 69, 70, 74, 76 and 77 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent number 6,299,001 to Frovlov et al.





Frovlov et al. '001 discloses a system (above) comprising a plurality of bases/grids (above) each having a front and back and comprising separate horizontal rods (16), separate reinforcing members/supports/bars (24, above) coupled to the back of the base inherently providing rigidity to the base so that the base is inherently

resistant to deformation in more than one direction (column 3, lines 58-64), and brackets (above) coupled to the base, wherein the base further comprises separate vertical rods (14) coupled to the horizontal rods, wherein a front side of the vertical rods are welded to a side of the horizontal rods (column 3, lines 30-33), wherein similarly the vertical rods are welded to the backsides of the horizontal rods, wherein the brackets are coupled to the horizontal rods with at least one fastener (above) comprising a screw and plate (above), wherein the at least one fastener inherently allows space (above), wherein the bracket comprises hooks (above), wherein the vertical and horizontal rods are generally perpendicular to one another, wherein the reinforcement members provide support to the base, wherein the system further comprises a tray/tray system (above), wherein the vertical rods are spaced, wherein the vertical and horizontal rods are generally planar in configuration.

Claim Rejections - 35 USC § 103

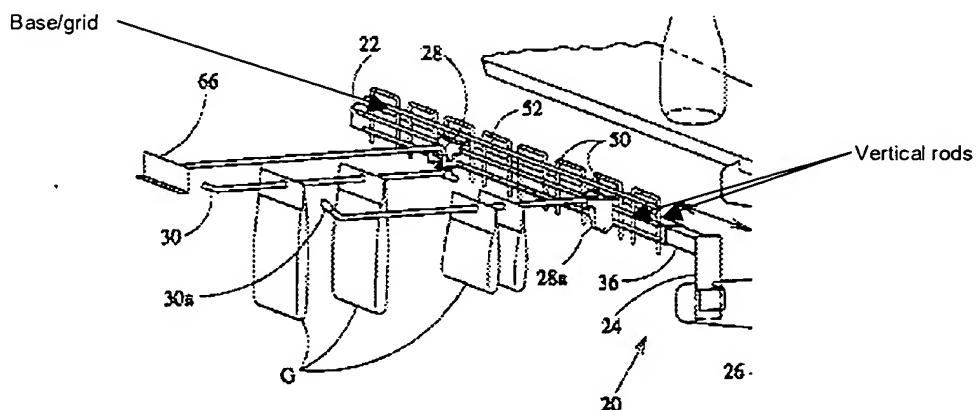
Claims 39, 48-51, 57, 65-68 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frovlov et al. '001.

Regarding claims 39, 57 and 71, Frovlov et al. '001 teaches the previous invention wherein the horizontal and vertical members are *welded* together, wherein the reinforcement members/supports/bars are attached to the vertical members, but fails to specifically divulge the reinforcement members/supports/bars to be *welded* to the vertical members. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have *welded* the reinforcement members/supports/bars

to the vertical members since it is already taught that doing so is a convenient and well known method of connecting two members together.

With respect to claims 48-51 and 65-68, Frolov et al. '001 teaches the previous invention failing to specifically teach the vertical members to have a diameter of about 0.30 to 0.425 inches and more specifically a diameter of about 0.375 inches, or the horizontal members to have a diameter of about 0.285 to 0.35 inches and more specifically a diameter of about 0.306 to about 0.312 inches. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the diameters of the vertical and horizontal members of any number of various dimensions, including those as previously recited, because doing so is considered a design choice and hence not considered patentable since the applicant has not specifically recited in the originally filed specification why such a dimension is critical to the invention or produces any unexpected result. See *In re Kuhle*, 526 F.2d 553, 188, USPQ 7 (CCPA 1975).

Claims 35, 36, 44, 60 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 6,471,079 to Berlingieri.



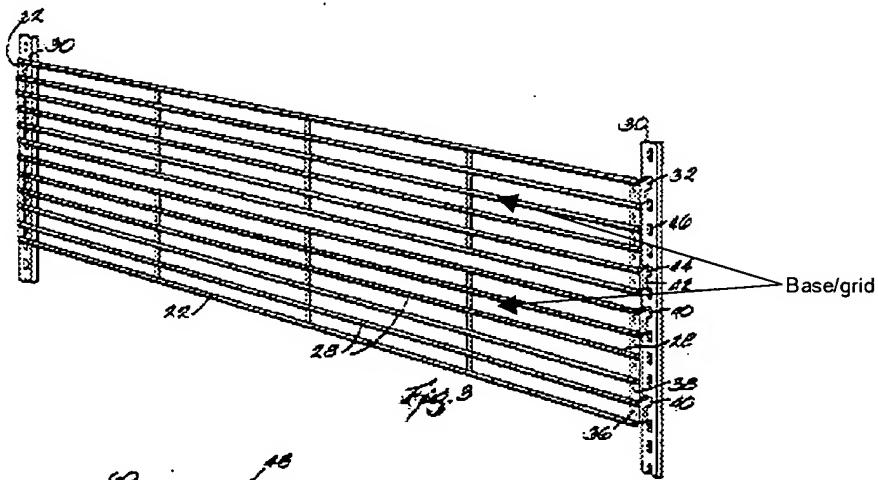
Berlingieri '079 teaches a system (figure 1) comprising a base/grid (above) having a front and back and comprising separate horizontal rods (52), a separate member/support/bar (22,36) coupled to the back of the base inherently providing rigidity to the base so that the base is inherently resistant to deformation in more than one direction, and brackets (28,28a) coupled to the base, wherein the base further comprises separate vertical rods (above) coupled to the horizontal rods, wherein the vertical rods are welded to the backsides of the horizontal rods (column 6, lines 10-12), wherein the member/support/bar is a square tube. However, Berlingieri '079 fails to specifically teach more than one member/support/bar. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided more than one member/support/bar since doing so would be seen as simply a duplication of parts. See *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Claims 45, 61 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 6,471,079 to Berlingieri, in view of U.S. Patent number 4,501,369 to Fox.

Berlingieri '079 teaches the previous invention, wherein the members/bars/supports should be rigid, but fails to specifically teach the members/bars/supports to be about one inch and about 11 gauge steel. However, Fox '369 teaches the use of square-sectioned steel members/bars/supports (column 2, lines 45 and 57-59). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the members/bars/supports of steel since Fox '369 teaches that the use of such is well known and steel would inherently provide rigidity. Further, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to have constructed the members of any number of various dimensions, including about a one inch square tube and about 11 gauge because doing so is considered a design choice and hence not considered patentable since the applicant has not specifically recited in the originally filed specification why such a dimension is critical to the invention or produces any unexpected result. See *In re Kuhle*, 526 F.2d 553, 188, USPQ 7 (CCPA 1975).

Claims 35, 53, 55, 63, 69 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 5,769,248 to Johnson in view of Frolov et al. '001.



Johnson '248 teaches a system (figure 3) comprising bases/grids (above) each having a front and back and comprising separate horizontal rods (28), brackets (32) coupled to the base, wherein the base further comprises separate vertical rods (26) coupled to the horizontal rods, wherein the vertical rods are welded to the backsides of the horizontal rods (column 3, lines 5-6), wherein the system comprises a shelving system for supporting the bases (30, both sides, a "shelving system" is inherently a

system for shelving, so clearly, 30 on both sides function as a system for shelving). However, Johnson '248 fails to specifically teach the system to include separate members/supports/bars coupled to the back of the base inherently providing rigidity to the base so that the base is inherently resistant to deformation in more than one direction. Nevertheless, Frolov et al. '001 teaches the previously described members/supports/bars coupled to the back of a base inherently providing rigidity to the base so that the base is inherently resistant to deformation in more than one direction. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have coupled members/supports/bars to the back of the base inherently providing rigidity to the base so that the base is inherently resistant to deformation in more than one direction in the system of Johnson '248 as in Frolov et al. '001 so as to provide for a more sturdy and structurally sound system.

Response to Arguments

Applicant's arguments filed September 15, 2003 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 35-77 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


Jon Szumny
Patent Examiner
Technology Center 3600
Art Unit 3632
October 22, 2004


ANITA KING
PRIMARY EXAMINER